

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Donald Eugene Griffin, Jr.,)	
)	C/A No. 3:12-0717-MBS
Plaintiff,)	
)	
vs.)	
)	OPINION AND ORDER
Jasper W. Cureton, Jr., in his individual)	
and official capacity; V. Claire Allen, in)	
her individual and official capacity;)	
)	
Defendants.)	
)	

Plaintiff Donald Eugene Griffin is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at the Lee Correctional Institution in Bishopville, South Carolina. Defendants are an Associate Justice and a Deputy Clerk with the South Carolina Court of Appeals. Plaintiff, proceeding pro se, filed a complaint on March 8, 2012, alleging that Defendants wrongly denied him in forma pauperis status on appeal. As a result, Plaintiff's appeal was dismissed because he was unable to pay the filing fee or obtain transcripts. Plaintiff contends he was denied due process of law and access to the courts in violation of his rights under the First and Fourteenth Amendments. Plaintiff brings the within action pursuant to 42 U.S.C. § 1983, and requests that this court "remand this matter back to the South Carolina Court of Appeals with INSTRUCTION for an APPEAL on both counts."

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On April 13, 2012, the Magistrate Judge issued a Report and Recommendation in which she determined that Plaintiff failed to state a claim for relief because the court is without jurisdiction to either issue a mandamus or review the proceedings of a state court. Accordingly, the Magistrate Judge recommended that the

case be summarily dismissed without prejudice and without issuance and service of process. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. This court is obligated to conduct a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The Report and Recommendation is adopted and incorporated herein by reference. Plaintiff's complaint is dismissed without prejudice and without issuance and service of process for failure to state a claim on which relief may be granted.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

May 31, 2012

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**